Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	MM DOCKET NO. 92-111
	)	
DEAS COMMUNICATIONS, INC.	)	File No. BPH-910208MB
	)	
HEALDSBURG EMPIRE CORPORATION	)	File No. BPH-910212MM
	)	
For Construction Permit for a New FM Station on Channel 240A in Healdsburg, California	)	

To: Administrative Law Judge
Edward J. Kuhlmann

OBJECTION TO WITNESS NOTIFICATION

Deas Communications, Inc. ("Deas"), by its attorneys and pursuant to the procedural schedule in this proceeding, hereby objects to the request of Healdsburg Empire Corporation ("Empire") that Deas' President Mario Edgar Deas appear at hearing for cross-examination. Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases ("Report and Order"), 6 FCC Rcd 157, 162 (1990), clarified, 6 FCC Rcd 3403, 3404 (1991) ("Clarification Order"); Rule 1.248(d)(4).

In the Report and Order, the Commission devotes considerable length to expediting hearings themselves. 6 FCC Rcd at 160-163. To that end, at 162 para. 36, the Commission directs that:

> ALJs should permit oral testimony and cross-examination only where material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures or the public interest otherwise requires oral evidentiary proceedings. Witnesses should not be requested for cross-examination unless there is a legitimate expectation that some part of their direct testimony, as reflected in exhibits, is subject to a question of substantial decisional significance (citation omitted.)

This objective is incorporated into Section 1.248 of the Rules.[1] See The Dunlin Group, 6 FCC Rcd 4642, 4645 n. 7 (Rev. Bd. 1991).

As to what constitutes proper grounds for challenging written direct testimony, the Clarification Order states, 6 FCC Rcd at 3404 para. 14, that:

> [t]he discovery process provides ample opportunity to test the applicant's bona fides, and in most cases, it will be material uncovered during discovery that raises a legitimate expectation that some part of a witness's direct testimony, as reflected in exhibits, is subject to a question of substantial decisional significance.

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[1] Rule 1.248(d)(4) states:

> In broadcast comparative cases involving applicants for only new facilities, oral testimony and cross examination will be permitted only where, in the discretion of the presiding judge, material issues of decisional fact cannot be resolved without oral evidentiary hearing procedures or the public interest otherwise requires oral evidentiary proceedings.

In this case, except for the standard document production exchange, there has been no discovery at all. Empire, though an active participant, has never asked that Mr. Deas or anyone else be deposed. It has not propounded written interrogatories, asked for admissions or sought additional documents. Although counsel for Deas and Empire have talked many times since designation, the subject of depositions was never raised.

Deas' Standardized Integration Statement, which mirrors its recent direct case exhibits, was filed on June 15, 1992, more than 100 days ago. Empire has never challenged any portion of the Integration Statement, never objected to it or sought any discovery based upon it. Under the rules, and in the spirit of the Commission's expedition orders and Rule 1.248(d)(4), it is now too late for Empire to raise its first challenge.

On the merits and despite its new lip service to Rule 1.248(d)(4), Empire has not shown in its notification request that "there is a legitimate expectation that some part of [Mr. Deas'] direct testimony, as reflected in exhibits, is subject to a question of substantial decisional significance," supra. To the contrary, even if all its claims had merit and integration credit were deducted accordingly, the outcome of

the case would be the same: Deas would still be dispositively preferred over Empire on the comparative issue.[2]

For the Presiding Judge's information, Deas' counsel had recommended to Empire's attorneys that under the circumstances of this case and in the spirit of expedition, the parties jointly agree not to request one another's principals for cross-examination. Empire declined. Deas has therefore asked that Empire's integrated principal be produced for cross-examination.[3] Should the Presiding Judge grant this Objection and rule that Mr. Deas need not appear, Deas voluntarily withdraws its request for Empire's principal.

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[2] In fact, on its merits Empire's witness notification request insults the reader's intelligence. It contains false arguments and spurious case citations having nothing to do with Deas' proposed testimony.

Empire's long-winded argument about curtailing "outside interests" is a red herring. The cited cases deal with retained outside business interests, Edgar Deas is pledged to terminate all of his, and Empire has never tried to test this pledge.

Every component of Deas' integration which Empire now wants to look at could have been challenged at deposition. Empire had every right to do so then. Absent good cause, it has no such right now.

Finally, even if true, all of Empire's speculations laid end to end could not overcome the decisive comparative advantage which Deas (with no media interests, 100% integration, 37 years' local residence and 100% minority status) enjoys over Empire (whose majority owners have two radio stations within 100 miles of Healdsburg and which claims 21% integration). Deas would still be the comparatively preferred applicant.

Empire has thus failed to raise material issues of decisional fact warranting Mr. Deas' appearance and justifying a 6,000 mile round trip from Healdsburg for cross-examination.

[3] For the reasons stated in its own notification, Deas believes its request for cross-examination complies with Rule 1.248(d)(4).

WHEREFORE, for these reasons, the Presiding Judge is requested to rule that Mario Edgar Deas need not appear for cross-examination at the upcoming hearing.

Respectfully submitted,

DEAS COMMUNICATIONS, INC.

By: _____
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September 28, 1992

CERTIFICATE OF SERVICE

I hereby certify that I have, this 28th day of September, 1992, served copies of the foregoing "Objection to Witness Notification" upon the following persons by first class United States Mail, postage prepaid:

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